

104TH CONGRESS
2D SESSION

H. R. 4234

To require reporting on toxic chemicals, to protect children's health, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1996

Mr. PALLONE (for himself, Mr. ANDREWS, Mr. TORRICELLI, and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To require reporting on toxic chemicals, to protect children's
health, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Right-To-Know
5 and Children’s Environmental Health Protection Act”.

6 **SEC. 2. FINDINGS; POLICY.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) The public has a fundamental right to know
9 how toxic chemicals are used, including information
10 about toxic chemicals contained in consumer prod-

1 ucts and foods used at workplaces, stored at indus-
2 trial facilities, and transported over public highways
3 and railways.

4 (2) This public's right to know is currently not
5 being met. Without this information, parents cannot
6 take adequate steps to protect their children, con-
7 sumers cannot make informed choices, and workers
8 and communities cannot protect themselves.

9 (b) POLICY.—It is the policy of the United States
10 that—

11 (1) adequate data should be developed with re-
12 spect to industry's use of and the public's exposure
13 to toxic substances, with priority given to the expo-
14 sure of children to toxic substances; and

15 (2) such data should be generated by manufac-
16 turers, processors, and users of chemical substances
17 and mixtures and then made available to the general
18 public so that parents can take steps to protect their
19 children, consumers can make informed choices, and
20 workers and communities can protect themselves
21 and work with industries to ensure cleaner and safer
22 methods of production.

1 **TITLE I—TOXICS REPORTING**
2 **AND PUBLIC RIGHT TO KNOW**

3 **SEC. 101. PUBLIC RIGHT-TO-KNOW REPORTING.**

4 (a) Section 313(g)(1)(C) of the Emergency Planning
5 and Community Right-To-Know Act (42 U.S.C.
6 11023(g)(1)(C)) is amended by inserting at the end the
7 following:

8 “(v) Number of employees, including contrac-
9 tors, at the reporting facility; number of employees,
10 including contractors, at the reporting facility ex-
11 posed to the chemical; and an estimate of occupa-
12 tional exposures to the chemical during the preced-
13 ing calendar year.

14 “(vi) In accordance with the definitions and re-
15 quirements of the Pollution Prevention Act, the
16 quantity of the toxic chemical reduced prior to recy-
17 cling, treatment, disposal, or release to the environ-
18 ment as a result of the following: equipment or tech-
19 nology modifications; process or procedure modifica-
20 tions; reformulation or redesign of products; substi-
21 tution of raw materials; and improvements in house-
22 keeping, maintenance, training, or inventory control.

23 “(vii) Annual materials accounting informa-
24 tion.”.

1 (b)(1) Within 12 months after the enactment of this
2 Act, the Administrator of the Environmental Protection
3 Agency shall promulgate regulations requiring submission
4 of annual materials accounting information pursuant to
5 this Act. At a minimum, such requirements shall include
6 the following:

7 (A) A description of the use of the chemical at
8 the facility.

9 (B) The starting inventory of the chemical at
10 the facility.

11 (C) The quantity of the chemical produced at
12 the facility.

13 (D) The quantity of the chemical brought into
14 the facility.

15 (E) The quantity of the chemical consumed at
16 the facility.

17 (F) The quantity of the chemical shipped out of
18 the facility as or in products.

19 (G) The quantity of the chemical reported
20 under section 6607(b) of the Pollution Prevention
21 Act.

22 (H) The ending inventory of the chemical at the
23 facility.

1 (2) Such regulations shall require that quantities re-
2 ported are complete and verifiable by computations under
3 conventional materials accounting practices.

4 (c) The Administrator shall integrate the reporting
5 requirements under the Emergency Planning and Commu-
6 nity Right-To-Know Act (42 U.S.C. 11001 et seq.), the
7 Pollution Prevention Act of 1990 (42 U.S.C. 12101 et
8 seq.), and this Act.

9 **SEC. 102. REPORTING ON HIGHLY TOXIC CHEMICALS.**

10 (a) Section 313(f)(1) of the Emergency Planning and
11 Community Right-To-Know Act (42 U.S.C. 11023(f)(1))
12 is amended by striking subparagraphs (A) and (B) and
13 inserting the following:

14 “(A) With respect to a toxic chemical manufac-
15 tured, processed or otherwise used at a facility,
16 10,000 pounds of the toxic chemical per year.

17 “(B)(i) Within 24 months of enactment of the
18 Public Right-To-Know and Children’s Environ-
19 mental Health Protection Act, the Administrator
20 shall establish additional or revised thresholds for
21 reporting under this section for the following highly
22 toxic chemicals:

23 “(I) Persistent toxic substances including
24 but not limited to dioxin and the following

1 heavy metals: cadmium, chromium, lead, and
2 mercury.

3 “(II) Bioaccumulative substances including
4 but not limited to substances listed as bio-
5 accumulative chemicals of concern at 60 Fed-
6 eral Register 15393.

7 Any chemical for which a threshold is established
8 under this subparagraph shall be considered a cov-
9 ered toxic chemical under section 313(c).

10 “(ii) The Administrator may establish addi-
11 tional or revised thresholds for reporting under this
12 section for highly toxic chemicals. A chemical which
13 is bioaccumulative or potentially bioaccumulative,
14 has a tendency to persist in the environment, or
15 poses a significant threat to public health or the en-
16 vironment at annual release levels below 10,000
17 pounds per facility shall be considered highly toxic.

18 “(iii) The Administrator shall establish thresh-
19 olds under this subparagraph at a level which will
20 ensure reporting on a substantial majority of total
21 releases of the chemical at all facilities subject to the
22 requirements of this section.”.

23 (b) Section 313(a) of the Emergency Planning and
24 Community Right-To-Know Act (42 U.S.C. 11023(a)) is

1 amended by inserting “or released” after “manufactured,
2 processed, or otherwise used”.

3 (c) Section 313(b)(1) of the Emergency Planning and
4 Community Right-To-Know Act (42 U.S.C. 11023(b)(1))
5 is amended by inserting “or released” after “manufac-
6 tured, processed, or otherwise used”.

7 (d) Section 326(a)(1)(B) of the Emergency Planning
8 and Community Right-To-Know Act (42 U.S.C.
9 11046(a)(1)(B)) is amended by adding at the end the fol-
10 lowing:

11 “(vii) Establish reporting thresholds for highly
12 toxic chemicals under section 313(f)(1)(B).”.

13 **SEC. 103. COVERED FACILITIES EXPANSION.**

14 Section 313(b)(1)(B) of the Emergency Planning and
15 Community Right-To-Know Act (42 U.S.C.
16 11023(b)(1)(B)) is amended—

17 (1) by striking “(B) The Administrator” and
18 inserting “(B)(i) The Administrator”; and

19 (2) by adding at the end the following:

20 “(ii) Effective beginning with the 1997 report-
21 ing year, facilities identified by the Standard Indus-
22 trial Codes listed in the Federal Register notice at
23 61 Fed. Reg. 33587–33619 shall be subject to the
24 requirements of this section.

1 “(iii) Within 24 months after the enactment of
2 the Public Right-To-Know and Children’s Environ-
3 mental Health Protection Act, the Administrator
4 shall promulgate a final regulation that adds all ad-
5 ditional Standard Industrial Codes of facilities that
6 have releases that are similar in volume and toxicity
7 to releases of facilities that are covered by this sec-
8 tion as of the date of enactment of such Act.”.

9 **SEC. 104. IMPROVED DATA COLLECTION AND DISSEMINA-**
10 **TION.**

11 Section 313 of the Emergency Planning and Commu-
12 nity Right-To-Know Act (42 U.S.C. 11023) is amended
13 by adding at the end the following:

14 “(m) IMPROVED DATA COLLECTION AND DISSEMI-
15 NATION.—

16 “(1) To enhance public access and encourage
17 use, improve the management of information re-
18 sources, and assist agency enforcement, pollution
19 prevention, and multimedia permitting and reporting
20 initiatives, the Administrator shall, within 24
21 months after the enactment of the Public Right-To-
22 Know and Children’s Environmental Health Protec-
23 tion Act, develop and implement a plan for integrat-
24 ing and improving access to publicly available infor-

1 mation within the jurisdiction of the agency. The
2 plan shall include, at a minimum—

3 “(A) creating standard data formats for
4 information management;

5 “(B) integrating information resources, in-
6 cluding the development and implementation of
7 common company, facility, geographic, and
8 chemical identifiers, and other identifiers as the
9 Administrator deems appropriate; and

10 “(C) establishing a system for indexing, lo-
11 cating, and obtaining agency-held information
12 about parent companies, facilities, chemicals,
13 geographic locations, and the regulatory status
14 of entities subject to agency oversight.

15 “(2) The Administrator shall coordinate the
16 data collection and dissemination activities of the
17 Environmental Protection Agency with other rel-
18 evant Federal, State, and local agencies in order to
19 promote greater integration of information and re-
20 duce the burden on regulated entities. The Adminis-
21 trator may provide for the integration and dissemi-
22 nation of publicly available data not collected by the
23 agency.

24 “(3) Notwithstanding any other provision of
25 law, no information shall be treated as a trade secret

1 or confidential business information unless the sub-
2 mitter demonstrates upon submission that—

3 “(A) the information has not been dis-
4 closed to any other person, except the Govern-
5 ment or those bound by confidentiality agree-
6 ments, and the submitter has taken reasonable
7 measures to ensure the confidentiality of the in-
8 formation;

9 “(B) the information is not required to be
10 disclosed to the public under any other Federal,
11 State, or local statute or regulation;

12 “(C) the information is not readily discov-
13 erable through reverse engineering; and

14 “(D) disclosure of the information is likely
15 to cause substantial harm to the competitive po-
16 sition of the submitter.”.

17 **SEC. 105. CIVIL ACTIONS.**

18 Section 326(a)(1)(A) of the Emergency Planning and
19 Community Right-To-Know Act (42 U.S.C.
20 11046(a)(1)(A)) is amended by inserting “any past or on-
21 going” after “An owner or operator of a facility for”.

22 **SEC. 106. REGULATIONS.**

23 The text of section 328 of the Emergency Planning
24 and Community Right-To-Know Act (42 U.S.C. 11048)
25 is amended to read as follows: “The Administrator may

1 prescribe such regulations as may be necessary to carry
2 out this title and the Pollution Prevention Act.”

3 **TITLE II—CHILDREN’S ENVIRON-** 4 **MENTAL PROTECTION ACT**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Children’s Environ-
7 mental Health Protection Act”.

8 **SEC. 202. FINDINGS.**

9 Congress finds that information disclosure imposes a
10 lesser burden than mandatory controls and is appro-
11 priately required for hazardous chemical risks that are less
12 well characterized than those that trigger mandatory con-
13 trols. Requirements to disclose have been shown to im-
14 prove safety and certainty by stimulating avoidance of
15 hazardous chemical risks in the marketplace by manufac-
16 turers and sellers of products as well as by consumers.

17 **SEC. 203. DISCLOSURE.**

18 Commencing 3 years after the date of enactment of
19 this Act, no person in the course of doing business shall
20 knowingly expose any infant or young child to a hazardous
21 synthetic chemical listed pursuant to section 204(a) in any
22 children’s food or children’s consumer product without
23 first providing a clear and reasonable warning of the expo-
24 sure, on or immediately adjacent to the food or product

1 at its point of sale to the retail customer, except as pro-
2 vided in section 205.

3 **SEC. 204. LISTINGS.**

4 (a) Within 1 year after the date of enactment of this
5 Act, and annually thereafter, the Administrator shall pub-
6 lish in the Federal Register a list of all hazardous syn-
7 thetic chemicals that have been identified or regulated as
8 carcinogens, reproductive toxins, or neurotoxins by any
9 agency of the Federal Government.

10 (b) The Administrator may publish in the Federal
11 Register a list of children's foods and children's consumer
12 products that are known or likely to expose children to
13 1 or more hazardous synthetic chemicals and may identify
14 those, if any, for which the Administrator has determined
15 that there is a reasonable certainty of no harm from any
16 hazardous synthetic chemical listed pursuant to subsection
17 (a).

18 **SEC. 205. EXEMPTIONS.**

19 (a) Section 203 shall not apply to any exposure to
20 a chemical that takes place less than 1 year following the
21 listing of the chemical as a hazardous synthetic chemical
22 pursuant to section 204(a).

23 (b) Section 203 shall not apply to any business with
24 fewer than 50 employees or to any public entity.

1 (c) Section 203 shall not apply to any food or
2 consumer product for which the Administrator has deter-
3 mined that there is a reasonable certainty of no harm from
4 any hazardous synthetic chemical listed pursuant to sec-
5 tion 204(a).

6 (d) Section 203 shall not apply if the person respon-
7 sible for the exposure can show that there is a reasonable
8 certainty of no harm from the exposure. In an action to
9 enforce section 203, the burden of proof to establish that
10 an exposure qualifies for exemption under this subsection
11 shall be on the defendant.

12 **SEC. 206. IMPLEMENTATION AND ENFORCEMENT.**

13 The Administrator is authorized, in the Administra-
14 tor's discretion, to promulgate regulations and to take
15 other appropriate action to carry out the purposes of this
16 title, including the bringing of civil actions on behalf of
17 the United States to redress any action or inaction in vio-
18 lation of this title. In carrying out the Administrator's re-
19 sponsibilities under this title, the Administrator may con-
20 sult with the Secretary of Health and Human Services,
21 the Secretary of Labor, the Secretary of Agriculture, the
22 Consumer Product Safety Commission, and any other
23 Federal agency with relevant expertise. In carrying out the
24 Administrator's responsibilities under section 204, the Ad-
25 ministrator shall secure data sufficient to identify hazard-

1 ous synthetic chemicals to which infants and young chil-
2 dren are exposed by requiring manufacturers or producers
3 to generate such data and by obtaining existing data from
4 any Federal, State, or local government agency.

5 **SEC. 207. JURISDICTION OF DISTRICT COURTS.**

6 The district courts of the United States shall have
7 jurisdiction over civil actions to redress any action or inac-
8 tion that is alleged to be or to have been in violation of
9 this title and may—

10 (1) restrain any person from taking any action
11 prohibited under this title;

12 (2) compel any person to take action required
13 under this title; and

14 (3) impose civil penalties.

15 **SEC. 208. PRIVATE CITIZEN ENFORCEMENT.**

16 (a) Any person other than the Administrator may
17 commence a civil action on its own behalf—

18 (1) against any person for violation of section
19 203; or

20 (2) against the Administrator for the failure to
21 perform any nondiscretionary act or duty under this
22 title.

23 (b) No action may be commenced pursuant to this
24 section unless—

1 (1) the plaintiff has given notice of its intent to
2 bring such action at least 60 days prior to the com-
3 mencement of the action to the Administrator and,
4 for a violation of section 203, to the violator; and

5 (2) for a violation of section 203, the Adminis-
6 trator has not commenced and is not diligently pur-
7 suing a civil action on behalf of the United States
8 seeking the civil relief applicable under section 209.

9 (c) In any action brought on behalf of the United
10 States following receipt of a notice pursuant to subsection
11 (b)(1), the person giving the notice may intervene as of
12 right as a plaintiff in such action.

13 (d) In an action brought under subsection (a), the
14 court shall award to any substantially prevailing plaintiff
15 (and in an action brought under subsection (c), to the
16 party intervening pursuant to subsection (c) if that party
17 contributed significantly to the success of the plaintiff) the
18 costs of litigation including reasonable attorney fees, un-
19 less the court finds such award to be inappropriate under
20 the circumstances.

21 **SEC. 209. CIVIL PENALTIES.**

22 In addition to any other remedy, including any pen-
23 alty under other applicable law, any person doing business
24 who is found to have violated section 203 shall be liable
25 to the United States for a civil penalty in an amount de-

1 terminated by the court not to exceed the larger of (1)
2 \$25,000 per day for each violation, or (2) one-half of the
3 total retail sales price of all the food and consumer prod-
4 ucts in violation.

5 **SEC. 210. PREEMPTION.**

6 Nothing in this title shall affect the authority of any
7 State or political subdivision of a State to establish or con-
8 tinue in effect any regulation or any other measure relat-
9 ing to any chemical substance or article containing a
10 chemical substance, including foods and consumer prod-
11 ucts.

12 **SEC. 211. DEFINITIONS.**

13 For purposes of this title, the following definitions
14 apply:

15 (1) The term “Administrator” means the Ad-
16 ministrator of the Environmental Protection Agency.

17 (2) The term “infant or young child” means an
18 individual younger than 7 years of age.

19 (3) The term “children’s food” means raw or
20 processed food, including food as defined in section
21 201(f) of the Federal Food, Drug, and Cosmetic Act
22 (21 U.S.C. 321(f)), which is normally consumed by
23 infants or young children.

24 (4) The term “children’s product” means a
25 consumer product, including—

1 (A) consumer products as defined in sec-
2 tion 3(a) of the Consumer Product Safety Act
3 (15 U.S.C. 2052(a)); and

4 (B) drugs, devices, and cosmetics as de-
5 fined in section 201 of the Federal Food, Drug,
6 and Cosmetic Act (21 U.S.C. 321);

7 which are sold or intended for use or consumption
8 by infants or young children or for which normal
9 and expected use or consumption in the home or in
10 schools will result in potentially greater exposure to
11 a hazardous synthetic chemical listed pursuant to
12 section 204(a) for infants or young children than for
13 adults.

14 (5) The term “reasonable certainty of no harm”
15 has the meaning given the term “safe” by section
16 408(b)(2)(A)(ii) of the Food, Drug and Cosmetic
17 Act (21 U.S.C. 346a(b)(2)(A)(ii)).

18 **TITLE III—ENDOCRINE**

19 **DISRUPTORS**

20 **SEC. 301. TESTING AUTHORITY.**

21 In addition to the substances referred to in section
22 408(p)(3)(B) of the Federal Food, Drug, and Cosmetic
23 Act (21 U.S.C. 346a(p)(3)(B)), the Administrator of the
24 Environmental Protection Agency shall provide for testing
25 under the screening program authorized by section 408(p)

1 of such Act, in accordance with the provisions of section
2 408(p) of such Act, of any substance to which the Admin-
3 istrator determines a substantial population may be ex-
4 posed.

5 **SEC. 302. WARNING LABEL REQUIREMENT.**

6 (a) IN GENERAL.—On the basis of the results of the
7 screening program authorized by section 408(p) of the
8 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
9 346a(p)), the Administrator may require a warning label
10 on or near any product at the product's point of sale if
11 such product contains a substance which has an endocrine
12 disrupting effect.

13 (b) CONTENTS OF LABEL.—Any warning label re-
14 quired under subsection (a) shall state the name of the
15 substance for which labeling is required and shall state
16 in plain language the potential effects of consumption of
17 endocrine disruptors.

18 (c) PUBLIC PETITION.—Any person may petition the
19 Administrator to take action under this section. The Ad-
20 ministrator shall decide whether to act upon such petition
21 and respond in writing within 90 days after receipt of the
22 petition.

23 **SEC. 303. REGULATORY DECISIONS.**

24 If, on the basis of the results of the screening pro-
25 gram authorized by section 408(p) of the Federal Food,

1 Drug, and Cosmetic Act (21 U.S.C. 346a(p)), the Admin-
2 istrator finds that a substance may have an endocrine dis-
3 rupting effect, such finding shall be sufficient basis for
4 applying by rule 1 or more of the requirements under sub-
5 section (a) of section 6 of the Toxic Substances Control
6 Act (15 U.S.C. 2605(a)) to such substance. No other sub-
7 section of section 6 or other section of the Toxic Sub-
8 stances Control Act shall apply to such rule. Such rule
9 shall be considered a rule under this Act.

10 **SEC. 304. ENFORCEMENT.**

11 The Administrator may promulgate regulations and
12 take other appropriate action to carry out sections 302
13 and 303, including the bringing of civil actions for enforce-
14 ment purposes. Any person may commence a civil action
15 on its own behalf against any person for violation of the
16 requirements of section 302 or 303.

○